

**TESTIMONY OF
JOHN CONNELLY, PRESIDENT
THE NATIONAL FISHERIES INSTITUTE**

**before the
LIVESTOCK & HORTICULTURE SUBCOMMITTEE
COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES**

Wednesday, October 1, 2003

Chairman Hayes, Congressman Ross, and distinguished members of the subcommittee, my name is John Connelly, President of the National Fisheries Institute (NFI). Thank you for the opportunity to explain unique implications for the fish and seafood industry of Subtitle D of the 2002 Farm Bill requiring mandatory country of origin labeling of fish and seafood products at the retail level.

The National Fisheries Institute is the national trade association for the diverse fish and seafood industry of the United States. The NFI is a “water to table” organization representing fishing vessel owners & aquaculturalists, processors, importers, exporters, distributors, retailers, and seafood restaurants. Our members are committed to providing consumers with safe, sustainable, and diverse seafood choices. NFI is the leading voice for promoting seafood as the daily protein food of choice for feeding the world. The nearly 700 members of the NFI are involved in the vast majority of the seafood consumed in the United States.

Mr. Chairman, the United States had a mandatory country of origin labeling program for food prior to the 2002 Farm Bill. The Tariff Act of 1936 requires all imported food to be labeled as to country of origin to the point of the “ultimate purchaser”, with a notable exception under the so-called J list for products difficult if not impossible to individually label -- such as whole fresh fish. The U.S. Customs Service interprets the ultimate purchaser to be either the retail consumer or the person who subjects the imported good to a “substantial transformation” such that the final product is fundamentally different from the imported good.

Fish and seafood items imported in retail-ready packaging are therefore already labeled as to country of origin. Those products that undergo a substantial transformation in the United States are not required to be labeled as a foreign good since such labeling would unfairly deny the investment of U.S. labor and capital in the production of the final product. Nor are such products eligible to be labeled as Products of the United States as Federal Trade Commission rules require “Products of the United States” to be 100 percent U.S. goods. Foreign goods therefore are not masquerading as U.S. goods in the marketplace or if they are, they do so in violation of existing requirements. This requirement will have the perverse consequence of potentially driving fish and seafood processing out of the United States. If a company that mixes a variety of products in the U.S. will now be required to go through the significantly increased costs of segregating all their products by country, then we run the real risk of that company siting their final processing facility in a single country and having that country be the “country of origin.”

In addition, domestic fish and seafood producers who wish to label their products as “Product of the USA” may voluntarily do so consistent with Federal Trade Commission and Food and Drug Administration rules. Unlike meat, domestic fish and seafood does not need a regulatory program, either voluntary or mandatory, to proclaim their products are “Made in the USA”. Fish and seafood are generally regulated by the Food & Drug Administration (FDA). The Food, Drug, & Cosmetic Act (FDCA) requires all food labeling to be “truthful and not misleading”. Fraudulent country of origin claims therefore can be enforced against by the FDA. In addition, the Federal Trade Commission has rules for declaring that products are “Made in the USA” that requires such products to be 100 percent U.S.-origin content and could also enforce against fraudulent country of origin claims.

It is for these reasons that the NFI believes that Subtitle D of the 2002 Farm Bill was unnecessary and unwarranted.

We are now deeply concerned about the manner in which the Department of Agriculture is implementing Subtitle D. If the voluntary guidelines issued by the USDA this year are any indication of the mandatory regulations, the program will be extremely onerous and impractical. While there may be some flexibility under the statutory language for the USDA to exercise its discretion in developing final regulations, we are concerned that many aspects of the program are strictly dictated by the statute.

I would like to focus on 5 key issues that pose considerable challenges for the fish and seafood industry.

1. Processed Food Exemption

The Farm Bill exempts “ingredients in a processed food item” from mandatory country of origin labeling. In the voluntary guidelines, USDA has interpreted this exemption in a manner inconsistent with, and often contradictory to, current Customs concepts of “substantial transformation”. This is leading to considerable confusion in the marketplace about whether products have to be labeled or not. If a product is covered under Customs rules but exempt under USDA rules, does it have to be labeled? And vice-versa?

To highlight this inconsistency, I would like to provide two examples: cooked shrimp and filleted hoki (a New Zealand finfish). Under Customs rules it has been determined that cooking imported shrimp does not constitute substantial transformation. Therefore, a U.S. processor who cooks imported raw shrimp must continue to label the product with a foreign country of origin. USDA, however, is proposing to exempt all cooked products under the processed food exemption. On the other hand, Customs has determined that importing whole, headed and gutted hoki and filleting it here in the US does constitute substantial transformation, exempting such product from labeling. USDA is proposing to require labeling of such product.

It would seem prudent, therefore, for the USDA to develop a definition for “ingredients in a processed food item” that is as consistent as possible with US Customs “substantial transformation” standard – a standard that fish and seafood companies understand and already comply with.

2. Labeling of Commingled and Blended Products

Currently the USDA is proposing that retail products that contain commingled or blended ingredients from multiple countries of origin be labeled as to country of origin by order of predominance by weight. In addition, the USDA is proposing that facilities that source similar raw material from multiple countries of origin, such as raw shrimp, must maintain verifiable segregation plans to keep the products from different countries separate from one another.

These proposals are utterly impractical and fail to recognize the fundamental nature of the production process. Facilities are run as efficiently as possible to produce a product for the consumer based on such criteria as quality, value, and price. In the case of shrimp, product from multiple countries of origin may be commingled at the bulk level to achieve the desired criteria. While maintaining a segregation plan throughout the production process may be possible, it is certainly not practical. It will require either the creation of redundant processing capabilities and/or the shutting down of the production process between batches of differing origin product in order to maintain the degree of segregation and ultimate labeling that USDA is proposing.

I believe these proposals stem from a concern at USDA that some may choose to add a *de minimus* amount of U.S.-origin product and then list the United States first in a list of countries of origin on the package. While this is a legitimate concern, the issue can easily be remedied by simply requiring an alphabetical listing of multiple countries of origin.

Further, the combination of multiple origin raw materials is dynamic and constantly changing. This will require seafood producers to maintain significantly more diverse inventories of packaging materials in order to comply with law. Not only does this add considerable logistical challenges to operations, it will also increase costs as packaging materials will need to be ordered in smaller batches and therefore greater costs. These costs could be considerably reduced if USDA would allow a “May Contain” label listing multiple countries of origin or a table where the relevant countries of origin could be checked or marked.

3. Record-keeping Requirements

Subtitle D authorizes the USDA to require a verifiable recordkeeping audit trail at all levels of the supply chain to verify country of origin claims. USDA is proposing that all levels in the supply chain maintain complete records of the downstream history of the product all the way to the level of the domestic grower (and presumably individual fishermen for wild-caught seafood which, of course, isn’t grown) or the country of origin declared to Customs at time of entry.

Not only is it an incredibly excessive record-keeping requirement to expect everyone in the supply chain to maintain such complete histories of the product, the record-keeping burden falls far greater on domestic producers than on imported goods. Imported food must be accompanied by records throughout the supply chain that simply verify that the product comes from the country declared to Customs at time of entry. Domestic food must be accompanied by records that, presumably, identify the individual fishermen or grower of the product. This is virtually impossible. Fish and seafood products from dozens, in some cases hundreds of fishermen can be commingled in a fresh bulk form by primary seafood processors. There is simply no way to verify which fish came from which boat. Even in aquaculture operations, processing plants source fish from literally dozens of farms on any given day, commingling the fish from multiple farms not only at the plant, but on the truck picking up the fish at the farm gate.

The level of recordkeeping being proposed is simply impossible.

4. Wild vs. Farm-raised

In addition to country of origin, Subtitle D will require all fish and seafood products to be labeled as either “wild” or “farm-raised” even for products where this is only one kind (i.e. there is no such thing as farm-raised swordfish). Notwithstanding the obvious additional logistical and record-keeping burdens this requirement will impose on fish and seafood, the distinction between “wild” and “farm-raised” also present challenges.

For example, fishermen are now harvesting small bluefin tuna alive, releasing them into open-ocean net pens where they are grown and fattened on a highly nutritious diet before being harvested. Are such tuna “wild” or “farm-raised”?

This issue is particularly problematic for coastal shellfish. Many coastal shellfish operations involve the staking, claiming, leasing, outright ownership, or other form of reservation for exclusive use of shellfish beds in open water systems. The fact that the production from these beds is harvested from these open water systems could suggest that these products fall under the definition of “wild” shellfish. However, the fact these beds have been reserved for exclusive use in some manner may suggest that they have been removed from the “wild” domain and the products therefore considered “farm-raised”.

In addition, some of these shellfish beds may be cultivated, manipulated, or otherwise developed with aquaculture-based practices further suggesting the products are “farm-raised”. Yet again, municipalities or other “public” entities conduct some of this cultivation for the benefit of a public fishery thereby suggesting the products are “wild”.

Without substantially greater regulatory guidance from the USDA than that proposed in the guidelines, the distinction between “wild” and “farm-raised” will remain unclear for the producing communities, an untenable situation especially given the potential fines and penalties mislabeling could lead to.

5. Excessive Fines & Penalties

Subtitle D authorizes the USDA to impose fines up to \$10,000 per day per violation for mislabeled goods. These fines may be applied throughout the supply chain. While retailers may only be fined for willful violations, the rest of the supply chain may be subject to these onerous fines simply for making mistakes in what is an incredibly complicated system. This level of liability seems excessive and unwarranted. In fact, the threat of fines is so great the supply chain from the top down is already seeking to indemnify itself from fines over mislabeling that it feels it has little control over. That is, the individual fisherman or fish farmer will be the only one that cannot pass the liability down the line. Subtitle D should be amended to either lessen the level of the fines or target them towards intent so that willful violators are the ones at greatest risk.

Mr. Chairman, thank you for the opportunity to testify today. I would be pleased to answer any questions members of the subcommittee may have.

Thank you.



John Connelly

John Connelly became the President of the National Fisheries Institute in March 2003. NFI is the nation's leading trade association advocating for the fish and seafood business. Representing fishermen and aquaculture farmers, importers, processors, distributors, restaurants and grocery markets, NFI represents the fish and seafood value chain -- from "water to table."

Prior to NFI, John Connelly served in a number of assignments at the American Chemistry Council, including Vice President – Member Relations, Corporate Secretary, and Security Team Leader. In those roles, he led efforts on both the business and advocacy sides of the organization.

For five years, Connelly served in the United States Navy, in both shipboard and staff assignments. He continues to serve his country as a Commander in the United States Naval Reserve, with specializations in political-military affairs and terrorism consequence management.

John Connelly is a 1984 graduate of The College of the Holy Cross, with a degree in History. He also earned an MBA at night from George Mason University. He and his wife, Margaret McCloskey Connelly, have four children and live in McLean, Virginia.

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